COURT FEE ONE RUPEE INDIA एक रुपया CANCELLED

BEFORE HON'BLE HIGH COURT OF CHHATTISGARH AT BILASPUR (CG).

Civil Revision No. ...135..... .2006

Single Bench

ELECTION PETITIONER : SMT. AFROJ JAHAN, AGED ABOUT 43 YEARS,
W/O Mr. Mohd. Atik
R/O Dr. Bhim Rao Ambedkar Ward No.27,
Mowa Municipal Corporation,
Raipur (C.G.).

P.R. No. 1942/06
Presented by Shri K.G. Tamrakar
dated 19/7/06

VERSUS

RESPONDENTS

1. SMT. SALMA BEGUM, AGED ABOUT 36 YEARS,
W/O Mr. Sheikh Anwar,
Elected Councellor, Dr. Bhim Rao
Ambedkar Ward No. 27, Mowa Nagar
Palika Nigam, Raipur (C.G.).

2. Smt. Shakuntala Pandey,
W/O Mr. Sabhapati Pandey,
R/O Panchwati Nagar, Mowa Ward
No. 27, Nagar Palika Nigam,
Raipur (C.G.).

3. SMT. PUSHPA SHATHE,
W/O Mr. DINESH SHATHE
R/O L.I.C.Colony, Mowa Ward No.
27, Nagar Palika Nigam, Raipur.

4. SMT. ISHRATI BEE
W/o Mr. Ejaj Hussain
R/O Dabri Talab Par Mowa Ward No.27,
Nagar Palika Nigam, Raipur

5. SMT. MAHESHWARI, VERMA
W/O Mr. DEVCHARAN VERMA,
R/O Naharpara Kapa Ward No. 27,
Nagar Palika Nigam,
Raipur (C.G.).

6. SMT. GAYATRI BAI,
W/O Mr. SHANKAR LAL BAYA
R/O Dr. Bhim Rao Ambedkar Ward
No.27, Mowa, Nagar Palika Nigam,
Raipur (C.G.).

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NOTARY CHHATTISGARH

Contd....2

7. SMT. LEELAVATI SAHU
W/O Mr. LAKHAN SAHU
R/O Dr. Bhim Rao Ambedkar Ward
No. 27, Mowa Nagar Palika Nigam,
Raipur (C.G.).

8. SMT. SUNITA YADAV
W/O Mr. RAJENDRA YADAV,
R/O Dr. Bhim Rao Ambedkar Ward
No. 27, Mowa, Nagar Palika Nigam,
RAIPUR (C.G.).

9. Municipal Corporation, Raipur
Through Commissioner, Municipal
Corporation, Raipur (C.G.).

10. Chief Election Commission,
For, State of Chhattisgarh,
Mantralaya- D.K.S. Bhawan,
Raipur (C.G.).

11. The Returning Officer-Cum-
Collector, Raipur
Tah. & Distt. RAIPUR (C.G.).

CIVIL REVISION U/S 115 OF THE CODE OF CIVIL PROCEDURE.

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .C.R.C.P.R.V.1942 **सन् 2006**

CR 135/06

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

08.09.2006

Shri V. Tamaskar, learned counsel for the petitioner.

The matter is listed on defaults as pointed out by the office vide A.R.(J)'s note dated 29.8.2006 for following shortcomings:-

(1) The petition is barred by 59 days, condonation of delay application has not been filed.

(2) Security amount of Rs. 250/- has not been deposited and receipt has not been filed.

(3) Index is incomplete.

(4) Petition has not been filed under C.G. Municipal Corporation Act, 1956.

Learned counsel for the petitioner has moved an application for condonation of defaults on 4.8.2006.

Shri Tamaskar, learned counsel appearing on behalf of the petitioner submits that as per provisions of Section 115 of the Code of Civil Procedure, under which the revision petition has been preferred, the petition is well within time and the security amount has already been deposited by the petitioner before the Election Tribunal. He further submits that as per Rule 5 of the C.G. Municipal Corporation (Election Petition) Rules 1963, the procedure to be followed for disposal of election petition should be as per provisions of the Code of Civil Procedure.

Placing reliance on the judgment of the Hon'ble Supreme Court in the matter of **P.T. Rajan Vs. T.P.M. Sahir and others** reported in **(2003) 8 SCC 498**, it is argued that the real test to interpret any statute particularly

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ~~C.R.(P.R.) 194~~ CR 135/06 **सन् 2006**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

pertaining to procedural provisions even if it uses "shall" may be construed as directory if no prejudice is caused.

Further relying upon the judgment of the Hon'ble Supreme Court in the matter of **Ram Prasad Sharma Vs. Mani Kumar Subba and others** reported in **(2003) 1 SCC 289**, it is submitted that election petition should not be rejected at the threshold on the slightest pretext which may not have bearing on the matters to be strictly adhered to.

I have heard learned counsel for the petitioner.

The revision against the order of election Tribunal in an election petition is filed under Section 441 (F) (2) of the Act within 30 days from the date of such decision in the High Court and as per Rule 19 (2) of the C.G. Municipal Corporation (Election Petition) Rules, 1963, the revision petitioner is required to deposit a sum of Rs. 250/- as security for the cost of the revision and in case the provisions of the rules are not complied with, the High Court is to dismiss the petition.

Admittedly, the revision has been preferred with a delay of 59 days and the same does not accompany the receipt regarding deposit of the security amount as per Rule 19 (2) of the Act. The judgments cited above by learned counsel for the petitioner have absolutely no application in the facts of the present case.

Thus, looking to the nature of defaults the petition cannot be entertained and the same is liable to be dismissed on the account of abovementioned defaults. Accordingly, it is dismissed.

Sd/-
Dhirendra Mishra
Judge